

MINUTES

**MONTANA SENATE
56th LEGISLATURE - REGULAR SESSION
COMMITTEE ON BUSINESS AND INDUSTRY**

Call to Order: By **CHAIRMAN JOHN HERTEL**, on March 12, 1999 at
9:00 A.M., in Room 410 Capitol.

ROLL CALL

Members Present:

Sen. John Hertel, Chairman (R)
Sen. Mike Sprague, Vice Chairman (R)
Sen. Vicki Cocchiarella (D)
Sen. Bea McCarthy (D)
Sen. Glenn Roush (D)

Members Excused: Sen. Dale Berry (R)
Sen. Fred Thomas (R)

Members Absent: None.

Staff Present: Bart Campbell, Legislative Branch
Mary Gay Wells, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 598, 3/4/1999
HB 196, 3/4/1999
HB 306, 3/4/1999
Executive Action: HB 100

{Tape : 1; Side : A; Approx. Time Counter : 0}

HEARING ON HB 598

Sponsor: REP. JOE QUILICI, HD 36, BUTTE

Proponents: Nancy McCaffree, Commissioner, Public Service
Commission
Bill Squires, MT Telecommunications Assoc.

Mark Staples, MCI WorldCom
Steve Bullock, Department of Justice
Angela Fultz, Chief Deputy, Secretary of State
Barbara Ranf, U.S. West
Mike Strand, MT Independent Telecommunications
Systems
John Fitzpatrick, Touch America

Opponents: None

Opening Statement by Sponsor:

REP. JOE QUILICI, HD 36, BUTTE. This committee may remember a bill in the last session that addressed the issue of slamming. In 1996 Congress passed the Telecommunications Act. That opened up the competition in choice in the telecommunications industry. Since then, there have been deceptive practices occurring called slamming and cramming. Slamming changes your telecommunications provider without an authorization. Cramming is when a hidden charge is added to the bill. One day a lady was in the mall. There was a monetary contest being conducted. She signed up. She heard nothing. A month later when she received her telephone bill with a charge for USBI for \$4.47. She called the consumer council committee and the Public Service Commission and found out that USBI is United States Billing, Inc. She had signed up for a contest but it was for USBI. It is incidences such as these that this bill is trying to rectify. It can be called access charges or whatever. This bill is putting some teeth into the bill we passed in 1997. There is a fine of \$1000. Also, if these companies keep this practice going on and on, and the Commission finds that they have violated the statutes of Montana, then the PCS can ask the Secretary of State to pull their license. There may be some amendments suggested which were suggested in the House committee meeting. They were not accepted.

Proponents' Testimony:

Nancy McCaffree, Commissioner, Public Service Commission. She gave her testimony and handed in a written copy **EXHIBIT (bus56a01)**.

{Tape : 1; Side : A; Approx. Time Counter : 7.1}

Bill Squires, MT Telecommunications Assoc. We certainly support **HB 598**. We are the ones who offered amendments **EXHIBIT (bus56a02)** in the House. It is our opinion that these amendments do not water down the bill. This bill gives the PSC authority where it has never existed before and that is the authority to directly impose fines on telecommunications carriers where appropriate and

the ability to request the revocation of business license. That authority is important. We have come to the point in this business where there has to be some teeth put into a slamming and cramming bill. It is a blossoming problem. We, the local exchange providers, are the ones typically in the front lines of dealing with this issue. As a result of this, it is important for us also to see legislation such as this, that will hopefully limit greatly the incidences of slamming and cramming because it takes an inordinate amount of time from our service customers to help our local customers work through these problems. As a result of that I would like to explain the amendments. There are three amendments. The first two amendments are similar and apply to the hearing phase of the slamming complaint procedure and the license revocation procedures which are contained in 69-3-1305, subsection 3 (a) and (b) as amended. This is an extension of some very powerful authority and jurisdiction to the PSC. We think it is important to put some standards in by which the PSC will exercise this authority. These two amendments are the basis of this issue. It would require a "clear and convincing evidence" both to impose a fine for slamming or cramming and to request a revocation of a business license. It would also require an intent of "purposely or knowingly" to impose those fines or revoke a business license. As the number of telecommunications carriers grow, particularly long distance carriers, there is a great number of these carrier changes that come through our system every day. It is not unlikely that errors will be made. Errors do happen especially with this kind of volume of business. Currently, the PSC, to impose a fine, must request the approval of the state district court. That has been a burdensome procedure and hasn't been used. With this bill that burden has been taken away. We, though, feel some safeguards are necessary. The last amendment is just a clarification amendment. This is about the revocation of business licenses by the Secretary of State's office. This would clarify that this revocation authority is limited to a violation of this bill and would not apply to any of the other business practices that we or others would use. I would encourage the committee to consider the amendments. We are, though, in support of the bill and hope you will pass the bill.

Mark Staples, MCI WorldCom. We support this bill. We think there are new and fairly strict guidelines in this bill. We do have two amendments **EXHIBIT (bus56a03)** and whether you accept the amendments or not we are still in support of **HB 598**. We think there should be a time limit on this. I know the FCC rule is you have to make your complaint within 30 days. The PSC has a six month rule. Possibly somewhere between 30 days and six months would be a good idea. So the 30 day amendment of ours you can disregard. The other amendment concerns who is going to pay the fine and that person would be the person whose name is on the

bill and the one who pays the bill. It seems that the companies would have to cut through the fog and figure out who is the responsible person for paying the bill. We would suggest that the customer "or any person contractually or otherwise lawfully authorized to represent such party." This would be a more fair way than just to say "the customer who is going to pay the bill". This leaves all other persons, who may have ordered the service, not responsible. Thank you for your consideration.

{Tape : 1; Side : A; Approx. Time Counter : 16.5}

Steve Bullock, Department of Justice. We rise in support of **HB 598**. In the interim prior to the session, we did work with the PSC and local exchange carriers to determine how best to confront this problem. Our interest in working with the PSC and the Department of Commerce and others is in working for the consumers of Montana. It is definitely a problem here in Montana and we urge your support of this bill.

Angela Fultz, Chief Deputy, Secretary of State. I would like to draw your attention to one portion of the bill on page 3, the authority that has been mentioned as far as the Secretary of State's office is concerned. We would like to relay to you that we feel competent that we can do what is required even though it is a new area of law that we have not had the authority to do before. We stand in support of this bill.

Barbara Ranf, U.S. West. We support efforts to do something about this slamming issue. The bill passed in the last session has not curtailed these slamming activities. The Commissioner McCaffree mentioned something that I was going to talk about. In February there were some changes in the industry that seemed to spark a round of slamming. There were 300 people a day being slammed in February. There were 6000 customers of U.S. West slammed in 20 days. It is frustrating for us and we support this bill that will strengthen the law.

Mike Strand, MT Independent Telecommunications Systems. We support the bill. We do support the amendments by MTA and MCI. Thank you.

John Fitzpatrick, Touch America. I am sure that everyone has seen ads that if you dial 10-10-321 or 10-10-345, etc. you will save money. The last three numbers are a pick code. This identifies your long distance carrier. The number 321 stands for Telecom USA, etc. It is very easy to be slammed. You can be slammed intentionally by companies. When U.S. West has thousands of customers, one wrong slip on the computer can end up slamming a customer. You can even slam yourself if you happen to use one

wrong digit. This does happen frequently. Accidental slamming is of course very different from intentional slamming. I hope you will take that into consideration when you look at this bill. We do support the bill. Thank you.

Opponents' Testimony: None

{Tape : 1; Side : A; Approx. Time Counter : 21.8}

Questions from Committee Members and Responses:

SEN. BEA MCCARTHY asked **REP. QUILICI** if he wanted any or none of the amendments. **REP. QUILICI** said he did not feel they would strengthen the bill and really did not want any of the amendments.

SEN. VICKI COCCHIARELLA asked **Commissioner McCaffree** about who was responsible for paying the charges that Mark Staples brought forth in his amendments. And the other issue was about mistakes being made unknowingly that was brought up by Bill Squires.

Commissioner McCaffree said that the PSC feels that it will weaken the bill. The MCI amendments have not been seen till this morning and so have not been discussed among the commissioners. Off the top of her head, they would not support that amendment because it might weaken the bill. It would give more wiggle room and that is not the idea they would like to give. They would keep the bill as proposed.

SEN. MIKE SPRAGUE asked **Commissioner McCaffree** if the written authorization is a factor that would solve some of the problem. **Commissioner McCaffree** said that by setting out the standard, the written authorization will protect both sides. Therefore, she did not want the amendment.

Closing by Sponsor:

REP. QUILICI closed. Accidents can happen with this many carriers involved and we certainly don't want to go after someone who accidentally slams or crams a person. The Commission is not going to use this statute to go after the accidental slamming. After two years we have found out that there is not enough teeth in the old bill to effectively stop those people who purposely slam and cram. **SEN. MCCARTHY** will carry the bill on the Senate Floor. Thank you for a good hearing.

{Tape : 1; Side : A; Approx. Time Counter : 30.9}

Sponsor: REP. JOHN COBB, HD 50, AUGUSTA

Proponents: None

Opponents: None

Opening Statement by Sponsor:

REP. JOHN COBB, HD 50, AUGUSTA. This is a clean up bill. It is an act allowing the electric energy producers' license tax to be itemized on a customer's bill. Right now under Montana law, this little tax, which is about fifteen to twenty cents a month on the electrical bill, cannot be itemized on the consumer's bill. Possibly, because it is a small tax, this is the reason for this law. It has been on the books for years and with deregulation, all fees, charges, etc. should be itemized on a bill so that the consumer knows what they are paying for.

Proponents' Testimony: None

Opponents' Testimony: None

Questions from Committee Members and Responses: None

Closing by Sponsor:

REP. COBB closed. SEN. COCCHIARELLA will carry the bill on the Senate Floor.

{Tape : 1; Side : A; Approx. Time Counter : 33.3}

HEARING ON HB 306

Sponsor: REP. SHIELL ANDERSON, HD 25, LIVINGSTON

Proponents: Mike Strand, MT Independent Telecommunications
Systems
Nancy McCaffree, Commissioner, Public Service
Commission
L. J. Godfrey, AT&T
Barbara Ranf, U.S. West

Opponents: None

Informational Testimony: Bill Squires, MT Telecommunications
Assoc.

Opening Statement by Sponsor:

REP. SHIELL ANDERSON, HD 25, LIVINGSTON. He presented the bill and handed in written comments **EXHIBIT (bus56a04)**.

{Tape : 1; Side : A; Approx. Time Counter : 37.3}

Proponents' Testimony:

Mike Strand, Executive Vice-President, MT Independent Telecommunications Systems. He gave his testimony and handed in his written comments. **EXHIBIT (bus56a05)**.

Nancy McCaffree, Commissioner, Public Service Commission. I would stand only to give our support to this bill. Thank you.

L. J. Godfrey, AT&T. We support this bill. We have been looking at it since last summer. Thank you.

Barbara Ranf, U.S. West. We support **HB 306**. We worked with others in the industry last session to put this together to find a model if it should be needed in the state. It is very targeted to get the support for high cost areas. Regardless of the company providing the service to a high cost area, they could draw support from this fund if it is needed. The FCC has worked at a snail's pace. For awhile they said 75% of the cost would be the responsibility of the state. They have since backed off of that. They are now looking at de-averaging of rates. What we do in Montana is we share our cost across the state. It costs less to provide service in Billings than in Wolf Creek. We average it out and charge the same price to everyone. In looking at de-averaging rates, customers could see a local phone bill go up. We may not have to use this bill at this time, but we think it would be premature to let it sunset out of the statute. We hope you support the bill.

{Tape : 1; Side : B; Approx. Time Counter : 0}

Opponents' Testimony: None

Informational Testimony: **Bill Squires, General Counsel, MT Telecommunications Assoc.** There were many questions raised on the House side concerning the competitive effects of a universal service fund. I am prepared to address those questions for this committee. Joan Mandeville, Assistant General Manager, Blackfoot Telephone Co. is very knowledgeable also. She was instrumental in the drafting of SB 89 especially the universal service provisions. The FCC has now set up for rural companies. It is

called the Rural Task Force. They are charged with trying to figure out of the federal fund is going to work for rural areas. Montana is very fortunate because Joan has been appointed by the FCC and the Joint Board to that Rural Task Force and will be working on behalf of Montana.

{Tape : 1; Side : B; Approx. Time Counter : 1.8}

Questions from Committee Members and Responses:

SEN. VICKI COCCHIARELLA asked **Mike Strand** that in looking at all the temporary section, how does this all work. Also, quarterly reports and payments have been changed to monthly. Why? **Mike Strand** said that the reason for those changes were suggested to by the National Exchange Carriers Assoc. which currently administers the Federal Universal Service Fund. They recommended that a few changes should be made in the bill to make it consistent from one state to the next basically. If distributions from the fund and collections are to be made on a monthly basis, they felt that reporting on a monthly basis would be more appropriate.

SEN. JOHN HERTEL asked **Mr. Squires** what he sees during the next two years as far as the FCC is concerned. **Mr. Squires** said that from the rural telephone companies' perspective, he sees nothing on the federal side impacting rural companies until 2001. The FCC's time frame right now is to implement "cost proxy studies". These are cost models for companies. He feels that this will keep slipping. Cost proxy studies, also called computerized cost models, are supposed to calculate on a forward looking basis all of the costs to provide service to the rural areas. This is an enormous task even for companies such as U.S. West.

SEN. COCCHIARELLA asked **REP. ANDERSON** the reasoning of putting the sunset out into the future. Is this to maintain the language in law, just in case? What do you think could trigger the PSC to implement this universal fund between now and then. **REP. ANDERSON** said he felt the only reason it could be triggered would be if the Federal Universal Fund was retracted. Then there might be a reason. Then the PSC might have to implement another universal fund. If this doesn't happen, then this backup policy would not be used. But something should be in place, just in case. **Mr. Strand** said that this is just one leg of the stool. The other leg is access charges paid by long distance companies. This is a larger portion of our revenues should the FCC eliminate this.

Closing by Sponsor:

REP. ANDERSON closed. Thank you for a good hearing.

{Tape : 1; Side : B; Approx. Time Counter : 7.1}

EXECUTIVE ACTION ON HB 100

Motion: SEN. MCCARTHY moved that HB 100 BE CONCURRED IN.

Discussion: Motion: SEN. MCCARTHY moved that HB 100 BE AMENDED
EXHIBIT (bus56a06) .

Discussion: Bart Campbell explained the amendments. These are just clarifications. Number 1 and 2 are the only ones with substance. If you don't take "clients" out, it is unclear with the pronoun "who". Section numbers had to be changed with changes that have been made.

Vote: Motion that HB 100 BE AMENDED carried unanimously. 4-0

Motion/Vote: SEN. HERTEL moved that HB 100 BE CONCURRED IN AS AMENDED. Motion carried unanimously. 4-0

ADJOURNMENT

Adjournment: 10:10 A.M.

SEN. JOHN HERTEL, Chairman

MARY GAY WELLS, Secretary

JH/MGW

EXHIBIT (bus56aad)